

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Christopher Anderson	Team: Squad #2	CCRB Case #: 201701720	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 02/27/2017 6:03 PM	Location of Incident: Home Street and Union Avenue; Tiffany Street and East 165th Street; Marmion Avenue and East 175th St	Precinct: 42	18 Mo. SOL 8/27/2018	EO SOL 8/27/2018	
Date/Time CV Reported Mon, 02/27/2017 7:50 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 03/06/2017 11:12 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Franklyn Santana	12709	949617	041 PCT
2. POM Corey Wooten	06551	951002	042 PCT
3. POM Brian McGovern	10806	956078	042 PCT
4. SGT Derwent Williams	01719	939693	041 PCT
5. POM Ahsan Zafar	03773	949822	041 PCT
6. POM Emilio Estevez	13502	944542	041 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Brian McGovern	Abuse: At Home Street and Union Avenue in the Bronx, Police Officer Brian McGovern stopped the vehicle in which § 87(2)(b) was an occupant.	
B.POM Corey Wooten	Abuse: At Home Street and Union Avenue in the Bronx, Police Officer Corey Wooten stopped the vehicle in which § 87(2)(b) was an occupant.	
C.POM Corey Wooten	Force: At Home Street and Union Avenue in the Bronx, Police Officer Corey Wooten pointed his gun at § 87(2)(b)	
D.POM Brian McGovern	Force: At Home Street and Union Avenue in the Bronx, Police Officer Brian McGovern pointed his gun at § 87(2)(b)	
E.POM Brian McGovern	Force: At Tiffany Street and East 165th Street in the Bronx, Police Officer Brian McGovern struck § 87(2)(b)'s vehicle with his vehicle.	
F.POM Brian McGovern	Abuse: At Tiffany Street and East 165th Street in the Bronx, Police Officer Brian McGovern damaged § 87(2)(b)'s property.	
G.POM Franklyn Santana	Force: At Marmion Avenue and East 175th Street in the Bronx, Police Officer Franklyn Santana pointed his gun at § 87(2)(b)	
H.POM Emilio Estevez	Force: At Marmion Avenue and East 175th Street in the Bronx, Police Officer Emilio Estevez pointed his gun at § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
I.SGT Dervent Williams	Force: At Marmion Avenue and East 175th Street in the Bronx, Sergeant Dervent Williams used physical force against § 87(2)(b)	
J.POM Ahsan Zafar	Force: At Marmion Avenue and East 175th Street in the Bronx, Police Officer Ahsan Zafar used physical force against § 87(2)(b)	
K.POM Franklyn Santana	Force: At Marmion Avenue and East 175th Street in the Bronx, Police Officer Franklyn Santana used physical force against § 87(2)(b)	
L.POM Emilio Estevez	Force: At Marmion Avenue and East 175th Street in the Bronx, Police Officer Emilio Estevez used physical force against § 87(2)(b)	

Case Summary

On February 27, 2017, Sergeant Saul Jeune of the 42nd Precinct called the IAB Command Center to report that § 87(2)(b) had sustained injuries during the process of his arrest, which had occurred earlier that day. It was received by the CCRB on March 6, 2017, via IAB log number 17-7589.

At approximately 6:03 p.m. on February 27, 2017, § 87(2)(b) was driving his vehicle in the vicinity of Home Street and Union Avenue in the Bronx when he was stopped by Police Officer Brian McGovern and Police Officer Corey Wooten of the 42nd Precinct (**Allegations A and B**). After § 87(2)(b) stopped his vehicle, Police Officer McGovern and Police Officer Wooten exited their vehicle, approached § 87(2)(b)'s vehicle, and both allegedly pointed their guns towards the front doors of § 87(2)(b)'s vehicle (**Allegations C and D**). § 87(2)(b) fled, driving his vehicle for the next approximately 10 to 15 minutes through the 41st, the 42nd, and the 48th Precincts (Board Review 08).

During this time, in the vicinity of Tiffany Street and East 165th Street, § 87(2)(b) stopped his vehicle and was allegedly hit from behind by the vehicle driven by Police Officer McGovern (**Allegations E and F**). § 87(2)(b) fled again, struck a civilian vehicle occupied by § 87(2)(b) and in the vicinity of Marmion Avenue and East 175th Street, was stopped by two NYPD vehicles, one of which drove in front of § 87(2)(b)'s vehicle and stopped, while the second vehicle stopped behind § 87(2)(b)'s vehicle. The two NYPD vehicles were occupied by Sergeant Derwent Williams, Police Officer Ahsan Zafar, Police Officer Franklyn Santana, and Police Officer Emilio Estevez, all from the 41st Precinct. Police Officer Santana and Police Officer Estevez exited their vehicle, pointed their guns at § 87(2)(b)'s vehicle (**Allegation G and H**), and instructed him to exit it.

§ 87(2)(b) exited his vehicle and was pulled to the ground by Sergeant Williams and was allegedly punched, kicked, and kned in his head by multiple officers (**Allegations I, J, K, and L**), causing lacerations and contusions. § 87(2)(b) was arrested for reckless endangerment, aggravated unlicensed operation of a motor vehicle, bail jumping, criminal mischief, resisting arrest, fleeing officers in a motor vehicle, an equipment violation, a motor vehicle license violation, and leaving the scene of an accident (Board Review 09).

Video footage related to this incident was recorded by surveillance cameras installed outside of 806 and 808 East 175th Street. The original video files can be found in IA number 77 (Board Review 01 and 02). The video footage depicts the intersection of Marmion Avenue and East 175th Street, where numerous NYPD vehicles can be seen arriving at the location. The intersection is situated a sizable distance from the cameras, and no actions taken by specific officers or their interactions with civilians can be gleaned from the footage.



201701720_20170606_1852_DM.mp4

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation due to § 87(2)(b)'s arrest.
- As of May 24, 2017, § 87(2)(b) has not filed a Notice of Claim with the City of New York regarding this incident (Board Review 03).
- § 87(2)(b)

- § 87(2)(b)

Civilian and Officer CCRB Histories

- This is § 87(2)(b)'s first CCRB complaint (Board Review 05).
- Police Officer Wooten has been a member of the NYPD for five years and has had four prior allegations against him in one case, case number 201700037, which remains open. § 87(2)(g)
- Police Officer McGovern, who has been a member of the NYPD for three years, has had no prior CCRB complaints against him.
- Sergeant Williams has been a member of the NYPD for 11 years and has had 21 prior allegations against him in nine cases, § 87(2)(g), § 87(4-b) and two substantiated allegations in one case. In CCRB case 201404505, one vehicle search and one seizure of property allegation were substantiated, with the Board recommending Command Discipline B for each allegation and the NYPD issuing Sergeant Williams Command Discipline B. § 87(2)(g)
- Police Officer Zafar has been a member of the NYPD for six years and has had 27 prior allegations against him in 12 cases, § 87(2)(g), § 87(4-b) and four substantiated allegations in three cases. In CCRB case number 201307133, one question and one frisk allegation were substantiated, with the Board recommending Instructions for each allegation and the NYPD issuing Instruction for the frisk allegation and No Disciplinary Action for the question allegation. In CCRB case 201404505, a vehicle search allegation was substantiated, with the Board recommending Command Discipline B and the NYPD issuing Command Discipline A. In CCRB case number 201606695, a frisk allegation was substantiated, with the Board recommending Command Discipline A and the NYPD disposition pending. § 87(2)(g)
- Police Officer Santana has been a member of the NYPD for six years and has had three prior allegations against him in two cases, none of which were substantiated. The § 87(2)(g)

Potential Issues

- No civilian witnesses of any of the allegations could be identified or located.

Findings and Recommendations

Explanation of Subject Officer Identification

- It is undisputed that the rear of § 87(2)(b)'s vehicle was involved in a collision with the front of the vehicle driven by Police Officer McGovern. Allegations E and F have therefore been pleaded against Police Officer McGovern.
- § 87(2)(b) stated that numerous officers "took turns" striking him in the head before he was handcuffed but could not attribute any strikes to any specific officers present. § 87(2)(g)

§ 87(2)(b) stated that he was not additionally struck after being handcuffed. The investigation determined via NYPD documents and officer statements that Sergeant Williams, Police Officer Zafar, Police Officer Santana, and Police Officer Estevez were the only officers present during the process of handcuffing § 87(2)(b) prior to the arrival of numerous additional units. Allegations I, J, and K, and L, therefore, have been pleaded against Sergeant Williams, Police Officer Zafar, Police Officer Santana, and Police Officer Estevez, respectively.

Allegation A –Abuse of Authority: At Home Street and Union Avenue in the Bronx, Police Officer Brian McGovern stopped the vehicle in which § 87(2)(b) was an occupant.

Allegation B –Abuse of Authority: At Home Street and Union Avenue in the Bronx, Police Officer Corey Wooten stopped the vehicle in which § 87(2)(b) was an occupant.

§ 87(2)(b) was interviewed via § 87(2)(b) on March 17, 2017. A follow-up statement was obtained in person at the § 87(2)(b) on April 26, 2017 (Board Review 10). Sergeant Williams was interviewed at the CCRB on April 18, 2017. Police Officer McGovern was interviewed at the CCRB on April 20, 2017. Police Officer Santana was interviewed at the CCRB on May 8, 2017. Police Officer Wooten was interviewed at the CCRB on May 9, 2017. Police Officer Zafar was interviewed at the CCRB on May 12, 2017. Police Officer Estevez was interviewed at the CCRB on May 15, 2017. § 87(2)(b) provided a telephone statement on June 2, 2017 (Board Review 11).

It is undisputed that Police Officer McGovern and Police Officer Wooten first attempted to stop § 87(2)(b) because of the vehicle’s tinted windows. § 87(2)(b) acknowledged that he had installed front side windows with a tint percentage of 35 percent (light transmittance of 65 percent) in his vehicle.

No person shall operate, on any public highway, road, or street, any motor vehicle in which the side windows are composed of, covered by, or treated with any material which has a light transmittance of less than seventy percent. NYS Vehicle and Traffic Law, Title 3, Article 9, Section 375.12-a (b)(2) (Board Review 06).

§ 87(2)(g)
§ 87(2)(g)
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§ 87(2)(g)

Allegation C –Abuse of Authority: At Home Street and Union Avenue in the Bronx, Police Officer Corey Wooten pointed his gun at § 87(2)(b)

Allegation D –Abuse of Authority: At Home Street and Union Avenue in the Bronx, Police Officer Brian McGovern pointed his gun at § 87(2)(b)

It is undisputed that § 87(2)(b) fled from Police Officer Wooten and Police Officer McGovern and was not taken into custody until his flight path was physically obstructed by police vehicles being stopped both in front of and behind his vehicle.

§ 87(2)(b) stated that in the vicinity of Home Street and Union Avenue, he stopped his vehicle at a steady red traffic signal, when he heard a voice instruct him, through a speaker, to pull over his vehicle. § 87(2)(b) looked behind him and saw an unmarked black vehicle stopped behind him, using neither turret lights nor sirens. § 87(2)(b) became “nervous” and continued driving. After driving approximately two to three blocks, § 87(2)(b) saw the same

vehicle with its turret lights turned on and “should have pulled over then” but did not do so because he had been the victim of a carjacking in the past in which the perpetrators used turret lights. § 87(2)(b) fled the location.

When asked if he fled for any other reason, § 87(2)(b) stated that the officers had their “guns in my face” and that when “the first thing I see is a gun, I’m taking off.” When asked to clarify at what point guns were pointed at him, § 87(2)(b) stated that it was when he had stopped at the steady red traffic signal at Home Street and Union Avenue. § 87(2)(b) was able to describe the physical appearances of Police Officer Wooten and Police Officer McGovern but did not know if they were uniform, only that they had black bulletproof vests.

When asked additional questions during an in-person follow-up interview, § 87(2)(b) stated that Police Officer Wooten and Police Officer McGovern pointed their guns at him in the vicinity of Home Street and Union Avenue. At this time, § 87(2)(b) had not seen anything indicating that Police Officer Wooten and Police Officer McGovern were officers or that he was to stop his vehicle and fled for these reasons.

Police Officer McGovern stated that he and Police Officer Wooten were in uniform when they observed § 87(2)(b) s vehicle for approximately 30 seconds before it turned right onto Home Street, when Police Officer McGovern turned on his vehicle’s turret lights and sirens to indicate for § 87(2)(b) to stop his vehicle. When § 87(2)(b) stopped his vehicle in a parking space, Police Officer McGovern and Police Officer Wooten, who were both dressed in uniform, exited their vehicle. Police Officer McGovern walked approximately two feet towards § 87(2)(b) s vehicle when § 87(2)(b) drove onto the sidewalk and away from Police Officer McGovern. Police Officer McGovern did not recall pointing his gun towards § 87(2)(b) during this portion of the incident and did not see Police Officer Wooten do so.

Police Officer Wooten stated that he saw the tinted windows on § 87(2)(b) s vehicle and discussed the windows with Police Officer McGovern, who turned his vehicle around. § 87(2)(b) s vehicle increased its speed and turned onto Home Street. Police Officer McGovern turned on his vehicle’s turret lights and sirens and turned onto Home Street. § 87(2)(b) stopped his vehicle approximately one car length behind and to the right of a vehicle that was stopped at a steady red traffic signal. Police Officer Wooten and Police Officer McGovern exited their vehicle and walked towards § 87(2)(b) s vehicle. Police Officer Wooten requested that Police Officer McGovern instruct § 87(2)(b) to lower his vehicle’s windows, which Police Officer McGovern did with no response from § 87(2)(b). Police Officer Wooten did not draw his gun or see Police Officer McGovern do so. Police Officer Wooten did not draw his gun because at this point of the incident, aside from the tinted windows in § 87(2)(b) s vehicle, he had no reason to believe that § 87(2)(b) was dangerous.

An officer may point his or her gun at another person so long as the officer has a reasonable fear for his or her own safety or another’s safety. Police Department v. Gliner, OATH Index Number 955/00 (2000) (Board Review 12).

§ 87(2)(b) alleged that the officers pointed their guns at him during the initial vehicle stop at Home Street and Union Avenue. § 87(2)(b), § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b), § 87(2)(g)

Furthermore, § 87(2)(b) stated in his initial interview that when he first saw Police Officer Wooten and Police Officer McGovern, he saw the black of their bulletproof vests but did not see whether they were in uniform. He stated in a follow-up interview that when the officers pointed their guns at him, he had not seen any indicators that Police Officer Wooten or Police Officer McGovern were officers or that they had instructed him to pull over his vehicle. § 87(2)(b)

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation E –Force: At Tiffany Street and East 165th Street in the Bronx, Police Officer Brian McGovern struck § 87(2)(b) s vehicle with his vehicle.

Allegation F –Abuse of Authority: At Tiffany Street and East 165th Street in the Bronx, Police Officer Brian McGovern damaged § 87(2)(b) s property.

As stated above, it is undisputed that § 87(2)(b) was involved in a collision in which the rear of his vehicle made contact with the front of the vehicle driven by Police Officer McGovern.

After providing his free-form narrative and subsequently being asked whether he was involved in any vehicle collisions during the incident, § 87(2)(b) stated that during the pursuit, in the vicinity of Tiffany Street and East 165th Street, he stopped his vehicle, which was then struck in the rear by the same police vehicle that initially attempted to stop him. § 87(2)(b) did not recall whether he was involved in any additional vehicle collisions during the incident.

§ 87(2)(b) stated that at approximately 6:00 p.m., she entered her vehicle on Simpson Street, saw turret lights turned on behind her, and her vehicle was struck in the rear by a burgundy minivan, leaving streaks of burgundy paint on her vehicle.

Police Officer McGovern and Police Officer Wooten both stated that § 87(2)(b) stopped his vehicle abruptly in the vicinity of Tiffany Street and East 165th Street. Both Police Officer McGovern and Police Officer Wooten exited their vehicle, when § 87(2)(b) put his vehicle into reverse and struck their vehicle with his. Police Officer McGovern created a Police Accident Report (Board Review 07) reflecting the damage sustained by both vehicles and stating that § 87(2)(b) “rammed” into Police Officer McGovern’s vehicle. Police Officer Wooten stated that during the incident, he transmitted over his radio that his vehicle had been “rammed”

by § 87(2)(b)'s vehicle, which is reflected in the radio run (Board Review 13). Both Police Officer Wooten (Board Review 14) and Police Officer McGovern (Board Review 15) made memo book entries stating that § 87(2)(b) reversed his vehicle into theirs.

Police Officer Marquis Walcott responded to a 911 call regarding the collision involving the vehicles of § 87(2)(b) and § 87(2)(b) and prepared an accident report stating that § 87(2)(b) struck § 87(2)(b)'s vehicle on the left rear driver side (Board Review 16).

Though the version of events presented by § 87(2)(b) and the officers are contradictory, the variety of contemporaneous police statements, including the radio run, memo book entries by Police Officer Wooten and Police Officer McGovern, are consistent with both each other and the subsequent statements that Police Officer Wooten and Police Officer McGovern provided to the CCRB.

§ 87(2)(b), § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation G –Force: At Marmion Avenue and East 175th Street in the Bronx, Police Officer Franklyn Santana pointed his gun at § 87(2)(b)

Allegation H –Force: At Marmion Avenue and East 175th Street in the Bronx, Police Officer Emilio Estevez pointed his gun at § 87(2)(b)

Both Police Officer Santana and Police Officer Estevez acknowledged that, at the conclusion of the vehicle pursuit, after they stopped their vehicle in front of § 87(2)(b)'s vehicle, they exited their vehicle and pointed their guns at § 87(2)(b)'s vehicle.

§ 87(2)(b), § 87(2)(g)

Allegation I –Force: At Marmion Avenue and East 175th Street in the Bronx, Sergeant Dervent Williams used physical force against § 87(2)(b)

Allegation J –Force: At Marmion Avenue and East 175th Street in the Bronx, Police Officer Ahsan Zafar used physical force against § 87(2)(b)

Allegation K –Force: At Marmion Avenue and East 175th Street in the Bronx, Police Officer Franklyn Santana used physical force against § 87(2)(b)

Allegation L –Force: At Marmion Avenue and East 175th Street in the Bronx, Police Officer Emilio Estevez used physical force against § 87(2)(b)

§ 87(2)(b) stated that prior to being handcuffed, an officer instructed him to “stop resisting.” § 87(2)(b) denied resisting arrest and stated that he attempted to kneel down when officers first approached him but did not move his body in any other way. § 87(2)(b) was struck in the left side of his face and forehead multiple times and saw closed fists, knees, and feet striking his head. § 87(2)(b) stated that he was not struck in any part of his body other than his head. § 87(2)(b) sustained swelling to his eye and pain in his face as a result, as seen in his arrest photo (Board Review 17). § 87(2)(b) received painkillers for these injuries at VCBC. He did not request or receive medical attention at a hospital.

Sergeant Williams stated that after stopping their vehicle in front of § 87(2)(b)'s vehicle, Police Officer Santana and Police Officer Estevez exited their vehicle and issued commands to § 87(2)(b). During this time, Sergeant Williams approached the rear of § 87(2)(b)'s vehicle, opened the front driver side door, and, by himself, pulled § 87(2)(b) to the ground, whose torso struck the ground first. Sergeant Williams grabbed hold of § 87(2)(b)'s left arm while Police Officer Santana, Police Officer Zafar, and Police Officer Estevez assisted by attempting to gain control of § 87(2)(b)'s right arm. The officers rolled § 87(2)(b) onto his stomach. § 87(2)(b) pulled his arms underneath his chest and twisted his body. Sergeant Williams struck § 87(2)(b) with a closed fist twice in the left side of his ribcage to gain control of § 87(2)(b)'s left arm. § 87(2)(b)'s level of resistance decreased, and Sergeant Williams gained control of his left arm. Sergeant Williams denied striking § 87(2)(b) in any part of his body other than his ribcage and denied striking § 87(2)(b) with any body part other than his fist. Sergeant Williams did not recall seeing any officer taking any action that could have caused § 87(2)(b)'s head injuries.

Police Officer Zafar stated that an officer communicated “Bronx homicide” during the vehicle pursuit. Police Officer Zafar learned after the incident that this referred to the officer's location at the time, but Police Officer Zafar thought during the entirety of the incident that a homicide suspect was being pursued. After Sergeant Williams pulled § 87(2)(b) out of his vehicle, Police Officer Zafar approached and saw § 87(2)(b) who lay face down on the ground. Police Officer Zafar positioned his body on top of and slightly to the right of § 87(2)(b)'s body and may have placed his knee on § 87(2)(b). Police Officer Zafar grabbed § 87(2)(b)'s right arm and attempted to pull it several times from underneath § 87(2)(b)'s body. Each time, § 87(2)(b) pulled his arm away from Police Officer Zafar and underneath his body and did not resist in any other way. Police Officer Zafar used a hand strike in response, which he described as pressing § 87(2)(b)'s right shoulder with an open palm four to five times, causing § 87(2)(b)'s body to move back towards the ground, approximately one inch.

Police Officer Zafar did not employ any additional hand strikes against § 87(2)(b) or use additional force against him. Police Officer Zafar denied striking § 87(2)(b) in his forehead or eye and denied seeing any officer do so. Police Officer Zafar did not recall seeing § 87(2)(b)'s face make contact with any surfaces during the incident. Police Officer Zafar heard

Police Officer Estevez communicate the officers' location on his radio after § 87(2)(b) was handcuffed.

Police Officer Santana stated that Sergeant Williams pulled § 87(2)(b) from his vehicle, causing him to land face down on the ground. Police Officer Santana did not see § 87(2)(b)'s face make contact with the ground during this interaction. While Police Officer Estevez went to the corner of the street and did not assist in handcuffing § 87(2)(b) Police Officer Santana and Police Officer Zafar attempted to handcuff § 87(2)(b) with Sergeant Williams. § 87(2)(b) crossed his arms underneath his chest, kicked his legs, and made punching motions with his arms, all while face down. Police Officer Santana pulled § 87(2)(b)'s arms behind his back and handcuffed him. Police Officer Santana denied using any further force against § 87(2)(b) denied striking, punching, or kicking him, and denied seeing any officer do so.

Police Officer Estevez stated that § 87(2)(b) opened the front driver side door of his vehicle and held his hands in the air after numerous commands to do so. Sergeant Williams and Police Officer Zafar approached § 87(2)(b)'s vehicle and pulled him out of it. Police Officer Estevez ran to the corner of the street to determine his location. Police Officer Estevez denied participating in or witnessing any aspect of the process of § 87(2)(b)'s being handcuffed.

§ 87(2)(b), § 87(2)(g)

Squad: 2

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date